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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Marriage of CARONDELETTE and ANTHONY RAY JENKINS.	B166038 (Los Angeles County Super. Ct. No. VD038394)
CARONDELETTE DENISE JENKINS, Respondent, v. ANTHONY RAY JENKINS, Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Roy L. Paul, Judge, and Robert B. Axel, Commissioner. Affirmed.

Matthew C. Long for Appellant.

Mark Stephen Smith for Respondent.

* * * * * *

Appellant Anthony Jenkins appeals from orders and a judgment entered after a dissolution proceeding between appellant and his former wife, respondent Carondelette Jenkins.

CONTENTIONS

Anthony contends that the trial court incorrectly determined the nature and amount of community debts.

FACTS AND PROCEDURAL BACKGROUND

Anthony and Carondelette married on October 4, 1996, and separated on March 18, 1999. During the marriage, Anthony was employed as a police officer with the Los Angeles Police Department. Carondelette was employed as a deputy sheriff with the Los Angeles County Sheriff's Department.

According to Anthony, he incurred attorney fees of $25,000 to $30,000 to defend himself against criminal charges brought against him by Carondelette. Anthony declared that on March 18, 1999, he and Carondelette had a verbal domestic dispute, during which he informed Carondelette that he wanted a divorce. Carondelette placed a telephone call to law enforcement authorities, alleging that Anthony had physically abused her. Anthony was arrested and charged with a felony. Anthony posted bail of $5,000, and incurred an additional $30,000 in legal fees. According to Anthony's declaration made in response to an order to show cause, after Carondelette was determined not to be a credible witness, the deputy district attorney moved to dismiss the complaint in the interests of justice.

On September 21, 2000, the trial court made the following orders: (1) it denied Carondelette's request for reimbursement from the community for her payment of escrow fees; (2) the parties were ordered to each pay $1,200 of a $2,400 debt owed on a vehicle purchased during the marriage; (3) it ordered each party to pay half of any debt incurred during the period of the marriage up until the date of separation from the community and to resolve how much debt was owed within 30 days of the date of the hearing; (4) it ordered the parties to each bear half the sum of $3,600 per month from March 1999 for mortgage

payments; (5) it denied reimbursement to Anthony for legal fees incurred as a result of a complaint filed by Carondelette against him; (6) it ordered that the attorney fees in the divorce proceeding be borne by each party; (7) it ordered that the domestic violence restraining order be dismissed without prejudice; and (8) each party was awarded as their own separate property their pension plans and separate personal property.

The record includes an August 1, 2001 declaration by Anthony's attorney, Matthew Long, in which he detailed numerous requests to Carondelette for information regarding the amount of community debts. According to the declaration, Mr. Long received incomplete copies of documents or no responses at all from Carondelette. Mr. Long then declared that "From the analysis of the complete information presented, the community is entitled to a credit of $5,505.93." Also contained in the record are copies of the letters sent back and forth from the parties' attorneys.

Anthony filed a motion for an order determining community debts setting a hearing date for August 21, 2002, and requesting a credit to the community of $5,505.93 from Carondelette.

On August 21, 2002, the trial court held a hearing to determine the community debts.

The reporter's transcript reflects that at the hearing, Mr. Long initially stated that the community was entitled to credit of $5,000 for the personal debts but that the obligations were a "wash," and the court should enter the dissolution and order. Carondelette's counsel, Mark Smith, then argued that Anthony had not paid one-half of the attorney fees incurred during a dependency case, in which a child from Carondelette's previous marriage had been removed and placed with his paternal grandfather. Mr. Smith stated that Anthony had agreed in writing to pay half the attorney fees incurred as a result of that action. Mr. Smith also stated that Anthony had not paid his share of the community debt for the vehicle. Mr. Long then urged that he had not received proper documentation of the premarital credit card debt incurred by Carondelette. He claimed that the documents that he did receive were unclear and incomplete.

The trial court indicated at one point that it would consider sending the matter to the trial judge who made the original order, then stated: "When you were here back in August

this court ordered that the judgment previously granted was to be finalized within 20 days of August 1 of the year 2001 and none of these things happened. [¶] As such, I think it's appropriate that the court just proceed with the judgment earlier ordered, not considering any preexisting debt of the petitioner. It's been ordered on two occasions to complete the matter."

While the trial court agreed with Mr. Long that the documents submitted by Carondelette were illegible, it ruled that it was going to finalize the matter, and that the premarital payment of Carondelette's debt paid by the community estate would not be considered. The court decided to have the judgment executed as submitted. The court stated: "So let's have the judgment reflect what is detailed as far as the premarital credit card debt of the petitioner. Counsel has indicated of course to find a wash. I agree to that."

On January 30, 2003, the trial court entered a judgment of dissolution and, in an attachment to the judgment after trial, ruled as follows: (1) it denied Carondelette's request for Anthony to reimburse escrow costs; (2) it ordered the parties to pay equally one-half of community debt on the Ford Expedition in the amount of $2,400 ($1,200 each); (3) it found there were no credit card community debts; (4) it ordered Anthony to pay to Carondelette credits in the amount of $800, payable at $50 per month, until paid in full; (5) it ordered the parties to pay one-half equally of outstanding attorney fees remaining from the dependency matter referenced in a letter dated April 1, 1999 in the amount of $8,182.25; Anthony's share of debt was $4,091.12; (6) it dissolved the parties' temporary restraining orders per stipulation; (7) it ordered each party to bear their own attorney fees and costs; and (8) it awarded each party as their sole and separate property their pension/retirement plans.

This appeal followed.

DISCUSSION

I. Whether the trial court erred in its determination of community debts based upon the information submitted by Carondelette

A. The credit card debt

On appeal, Anthony contends that the community is entitled to a credit of $5,730.61 for payments made by the community to Carondelette's premarital creditors. Anthony argues that Carondelette's initial claim of community debts differed from those she subsequently sought, and also differed from the amounts ordered by the trial court.

There are several problems with Anthony's argument on appeal. First, during the hearing on August 21, 2002, Mr. Long initially agreed to forego pursuing the community debts because it was a "wash," and that he would comply with the trial court's order of September 21, 2000. Although Anthony subsequently detailed the problems with determining the community debt, it appears that the trial court ultimately agreed to call the community debt a "wash," and to enter the judgment. Thus, appellant appears to have waived the argument that he is entitled to more community credit. (*In re Marriage of Broderick* (1989) 209 Cal.App.3d 489, 501 [by express agreement, conduct, or inaction, appellant may acquiesce in the claimed error and lose the right to attack it].)

Second, Mr. Long's declaration is the only evidence in the record upon which he relies to support his argument that Carondelette supplied incomplete information regarding the community debt, after the parties were ordered to resolve the community debt by the trial court on September 21, 2000. While he refers to Carondelette's incomplete and illegible information in his declaration and in letters between counsel, there is no evidence in the record of what Carondelette actually turned over to him. According to the record, Carondelette initially itemized the following debts on October 13, 2000 in her income and expense declaration: Macy's credit card -- $1,960; Nordstrom's credit card -- $2,615; First City Savings -- $8,840; Beneficial -- $8,640; Bank of America -- $6,300; Fedcharge -- $272; MBNA America -- $5,000. Anthony contends that these debts reflected balances at the date of separation rather than debts incurred and paid for during the marriage. The only evidence contradicting Carondelette's income and expense declaration is Mr. Long's declaration in

support of his motion for an order determining community debts. Mr. Long's declaration stated that the community paid $6,006 toward Carondelette's balance of $8,900.21 owing to "H.F.C." and $2,614 toward a Nordstrom account with a balance of $1,392.63. The declaration concluded that the community should be credited with $5,379.43.

We conclude that Anthony has not demonstrated error on appeal. (*In re Marriage of Eastis* (1975) 47 Cal.App.3d 459, 462.)

B. Anthony's Legal Fees

On appeal, Anthony also contends that the trial court erred in rejecting his claim that the $25,000 legal fees incurred by him was a community debt.[1]

While Mr. Long raised the issue at the September 21, 2000 hearing, he did not address that issue at the hearing on August 21, 2002 hearing. Anthony has therefore waived the issue on appeal. (*In re Marriage of Broderick, supra,* 209 Cal.App.3d at p. 501.)

In any event, we conclude that Anthony's argument is not well taken. Marriage does not make a spouse vicariously liable for the other spouse's tortious acts or omissions, unless a married person would be liable if the marriage did not exist. (Fam. Code, § 1000, subd. (a).)[2] If the liability is based on an act or omission which occurred while the spouse is performing an activity for the benefit of the community, it must be satisfied first from the community estate. (*Id.*, subd. (b)(1).) If the liability is not based on an act or omission for the benefit of the community, the liability shall first be satisfied from the separate property of the married person.

The record shows that when Anthony first brought that issue to the attention of the trial court at the September 21, 2000 hearing, Mr. Smith argued that Anthony was charged with an intentional tort and that Carondelette should not be responsible for legal fees in a case in which she claimed to be the victim. The trial court denied reimbursement from the

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[1] We note that in his declaration, Anthony claims that he incurred up to $35,000 in legal fees. It appears that on appeal, he is only claiming $25,000 in legal fees.

[2] All further statutory references are to the Family Code.

community stating that the denial did not prevent the issue from being reexamined in a civil lawsuit between the parties. We conclude that the trial court correctly determined that the conduct requiring Anthony to incur attorney fees did not benefit the community, and was not reimbursable.

The cases cited by Anthony do not advance his cause. *In re Marriage of Stitt* (1983) 147 Cal.App.3d 579 states that where the community does not benefit from embezzled funds, the employer first looks to the separate property of the embezzling wife for recovery, before turning to the wife's community property. The Fifth District found that the trial court did not err in assigning the full financial responsibility for the wife's embezzlement to the wife. In *In re Marriage of Feldner* (1995) 40 Cal.App.4th 617, the court stated that the community may be reimbursed for losses caused by the separate intentional conduct of the spouse, where the community has benefited from the conduct. Anthony has not, and cannot show a benefit to the community from his conduct.

Here, we find the trial court did not abuse its discretion in denying reimbursement to Anthony from the community.

DISPOSITION

The judgment is affirmed. Respondent shall receive costs on appeal.

NOT FOR PUBLICATION.

_____, Acting P.J.

NOTT

We concur:

_____, J.

DOI TODD

_____, J.

ASHMANN-GERST